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UNITED STATES GOVERNMENT

# Memorandum

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**RELEASE**

TO : Roger W. Goubeaux, Director  
Region 31

FROM : Harold J. Datz, Associate General Counsel  
Division of Advice

SUBJECT: Southern Nevada Building Trades Council, et al.  
(Catalytic, Inc., et al.)  
Case Nos. 31-CB-3922; 31-CB-3927; 31-CC-1439-1440

DATE: April 29, 1981

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These cases 1/ were submitted for advice on the issue of whether the charged parties ratified or adopted a wildcat strike and thereby violated Sections 8(b)(1)(A), 8(b)(3), and/or 8(b)(4)(B).

## FACTS

Catalytic, Inc., is a maintenance subcontractor of Southern California Edison Co. (herein SCE) at the latter's Mohave Generating Plant in Nevada. Catalytic and the International Unions with which the Unions herein are affiliated, are parties to a collective bargaining agreement known as the General Presidents' Agreement. The Council is not party to this agreement. The agreement, in effect at all relevant times, contains a no-strike provision. In January 1980, Catalytic and the Council, on behalf of the Unions, began negotiating

1/ Case 31-CB-3922 was filed by Catalytic, Inc., and alleges that the 14 charged unions (herein the Unions) violated Section 8(b)(3) by striking to modify a collective bargaining agreement without giving appropriate Section 8(d) notice. The charged Unions are: Asbestos Workers Local No. 135, Boilermakers Local No. 93, Bricklayers Local No. 3, Carpenters Local No. 780, Electrical Workers Local No. 357 (IBEW), Ironworkers Local No. 433, Millwright Local No. 1827, Operating Engineers Local No. 12, Painters Local No. 159, Pipefitters Local No. 525, Plasterers Local No. 797, Sheet Metal Workers Local No. 88, Teamsters Local No. 631, and Laborers Local No. 872.

Case 31-CB-3927 was filed by Western Ash Company and Flyash Haulers, Inc., and alleges that the Unions and Council violated Section 8(b)(1)(A) by impeding ingress to and egress from that Charging Party's facility and by threatening employees with violence. Case 31-CC-1439 was filed by Combustion Engineering, Inc., and alleges that the Council violated Section 8(b)(4)(i) and (ii)(B) by inducing Combustion Engineering's employees to strike and coercing and restraining it, with the object of forcing it to cease doing business with the Mohave Generating

(Continued)



over the subject of subsistence pay. 2/ The parties reached impasse on or about September 11, 1980, at which time the Council's chief negotiator, Jeffries, told Catalytic that he could not guarantee that he could hold his men.

On September 16, Catalytic's millwrights walked off the job, but returned at the beginning of the day on September 17. A short time later on the same day, Catalytic's electricians, represented by IBEW Local No. 357, walked off the job and established picket lines at gates 2 and 3 of the SCE facility, the gates normally used by Catalytic employees. Also, on September 17, IBEW business agent Roy Smith telephoned a Catalytic representative and asked that "his" pickets be provided with sani-cans and ice water. The same day, Catalytic sent a telegram to the Council stating that it could not increase subsistence pay and that the employees had left the worksite after IBEW had established a picket line. The telegram did not allege that the strike was unlawful, although it is undisputed that no 8(d) notice was given before the walkout began. The Council made no reply to the telegram.

On September 18, the electricians were joined in the walkout by employees of the other crafts. The pickets (mostly, although not entirely, electricians) carried signs reading: CAT. UNFAIR/ SUB. TOO LOW.

On September 19, Smith again phoned Catalytic. Upon being told that the strike was illegal, Smith replied that IBEW was not involved, but that unless Catalytic "upped the ante" -- i.e., increased the subsistence pay -- the picket lines would stay up until hell froze over or until IBEW International President Charles Pillard took over the work himself. On September 23, Smith again phoned Catalytic and stated that unless Catalytic raised subsistence pay to \$25 per day and 50 cents per mile, the picket lines would stay up.

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1/ Continued:

Station. The charge in Case 31-CC-1439 was subsequently amended to allege that the Unions also took part in the aforesaid secondary conduct. Case 31-CC-1440 was filed by Western Ash Company and Flyash Haulers, Inc., and alleges that the Council and Unions violated Section 8(b)(4)(i)(B) by engaging in (i) conduct with an object of forcing said employers to cease doing business with Southern California Edison and to force Southern California Edison to cease doing business with Catalytic, Inc.

2/ The General Presidents' Agreement is silent on the subject of subsistence pay. Prior to January, 1980, Catalytic had been paying subsistence pay pursuant to an oral side agreement which also provided that the parties would reopen the subject of subsistence pay in January, 1980.

Prior to September 22, all of the picketing took place at gates 2 and 3 of the SCZ facility. Most of the pickets were rank and file employees, mostly electricians. Also present at gate 2 on the morning of September 29 were stewards from IBEW, the Millwrights, the Teamsters, the Carpenters, the Sheet Metal Workers, the Iron Workers, and the Asbestos Workers. During the time that the stewards were present, a number of cars were prevented from entering gate 2 by the presence of pickets and parked cars blocking the gate. An IBEW steward, Silva, was present at gates 2 and 3 at various times during the strike. Silva at times acted as a leader of the pickets by denying supervisors access to the premises and, on one occasion, by having an unruly picket removed from the site.

On September 22, picketing spread to gates 5 and 6, which apparently were used predominantly by Combustion Engineering. There is no evidence that either of these gates was marked as being reserved for the exclusive use of any employer or employers. On September 23, picketing further spread to gates 1, 4, and 7. Gate 1 is, in practice, used by SCE employees. Gate 4 has a sign which reads, "Fly Ash Haulers, Inc., and its subcontractors Bins CTI Foothill Robertson from 7 a.m. to 4 p.m. use this gate. From 4 p.m. to 7 a.m. use SCZ Main Gate." Gate 7 has a sign which reads, "This Entrance is for Fly Ash Haulers, Inc., Combustion Engineering, Peter Kewit [sic] and Sons and all other contractors other than Catalytic." 3/ Pickets at gates 1, 4, 5, 6, and 7 were identified as rank and file electricians. Boulders were placed across the road at various gates and access and egress were prevented at various gates. There is also evidence of threats, throwing of rocks, and discharging of firearms having occurred at various gates, although not necessarily while stewards or Union officials were present.

On September 23, Combustion Engineering sent a telegram to the Council stating that the Council and the Unions had no dispute with Combustion and that picketing should be confined to gates 2 and 3. On September 24, Western Ash and Flyash sent a telegram to the Council advising that Western Ash and Flyash were neutral and that picketing should be confined to gates 2 and 3. It appears that electricians picketed at gate 7 on September 25. There is no evidence of picketing having occurred at any gate other than gate 2 or gate 3 after September 25. Picketing ceased altogether on October 15.

#### ACTION

It was concluded that the Region should proceed consistent with the directions set forth infra.

It was noted initially that the only issue submitted for advice is that of agency; the Region has concluded that the above conduct, if

3/ The Region has concluded that gate 4 is not adequately reserved for the use of any employer.

engaged in by a labor organization, violated Sections 8(b)(1)(A), 8(b)(3), and 8(b)(4)(B). Thus, the liability vel non of the various charged parties depends on whether various aspects of the wildcat activity may be imputed to them.

Case 31-CB-3922

It was concluded that complaint should issue, absent settlement, alleging that the following Unions, by failing to disavow and take steps to prevent the conduct of their rank and file, of which they had knowledge, in striking for increased subsistence pay, ratified the strike and, by failing to give the requisite 8(d) notices, violated Section 8(b)(3): IBEW Local 357, Millwrights Local 1827, Teamsters Local 631, Carpenters Local 780, Sheet Metal Workers Local 88, Ironworkers Local 433, and Asbestos Workers Local 135. The charge should be dismissed, absent withdrawal, as to the other Unions and the Council.

In Plumbers Local 195 (McCormack-Young Corp.), 233 NLRB 1087 (1977), the Board set forth the following principles regarding union liability for rank and file conduct: 1) Where a union establishes a picket line, it is under a duty to control the picketing. If it is unwilling or unable to control its pickets, it must bear responsibility for their conduct. 2) A union will be held liable where it fails to disavow conduct which occurs in the presence of a union agent. 3) The General Counsel bears the burden of showing that the union authorized the picketing or had knowledge of the misconduct and failed to disavow it and take corrective action. See also Teamsters Local 860 (Delta Lines, Inc.), 229 NLRB 993 (1977); Roofers Local 30, 227 NLRB 1444 (1977).

Concerning the IBEW, it is clear that through its business agent, Smith, the IBEW knew that a strike was going on and recognized that its purpose was to gain an increase in subsistence pay. It was recognized that on September 19, Smith disavowed any IBEW involvement in the strike. However, immediately after the electricians had walked off the job on September 17, Smith asked that "his" pickets be provided with sani-cans and ice water. Moreover, during the course of the same conversation in which he purported to "disavow" the employees' conduct, Smith set the condition on which work would resume, and on September 23, Smith repeated the strikers' demand for \$25 per day and 50 cents per mile as a condition to the removal of the pickets. In these circumstances, Smith's "disavowal" was considered to be self-serving, equivocal and ineffective. 4/ Of no

4/ Cf. McClintock Market, Inc., 244 NLRB No. 85 (1979) (disclaimer of recognitional objective rendered ineffective by subsequent inconsistent conduct).

less importance is the fact that Smith at no time took corrective steps to halt the strike. Being aware, through Smith, that its members were engaging in conduct which, if ratified by the Union, would be unlawful, given the lack of 8(d) notices, the IBEW was obligated to disavow and take steps to curtail such conduct. It did neither and, therefore, ratified the wildcat action. Accordingly, a Section 8(b)(3) complaint should issue as to IBEW.

There is also sufficient evidence to show that the Millwrights, Teamsters, Carpenters, Sheet Metal Workers, Ironworkers, and Asbestos Workers were on notice as to the unlawful nature of their rank and files' actions. Thus, while, unlike IBEW, none of these Unions was apparently in direct contact with Catalytic, each of them did have a steward present on the picket line on at least one occasion during the strike. It would be argued that the knowledge which these stewards possessed concerning the purpose of the strike would be imputable to their respective Unions, since the stewards' presence at the picket line was within the general scope of their authority to police the contract. See, e.g., Boilermakers (Regor Construction Co.), 249 NLRB 840 (1980); Teamsters Local 745 (Transcon Lines), 240 NLRB 537 (1979); Teamsters Local 886 (Lee Way Motor Freight, Inc.), 229 NLRB 832 (1977). Thus, since the above-named Unions were on notice as to the unlawful nature of the strike, and since they also failed to disavow or take steps to prevent further unlawful conduct, all of them would be said to have similarly ratified the wildcat action and thereby to have violated Section 8(b)(3). 5/

On the other hand, the evidence was considered insufficient to show that the remaining Unions were on notice as to the unlawful nature of the strike. Thus, the September 17 telegram from Catalytic to the Council merely stated that employees had left the jobsite after "IBEW had established a picket line." Since the Council was functioning as a bargaining agent for the Unions, notice to the Council as to the presence of a picket line may be imputed to the Unions. The Unions, however, cannot be presumed to be on notice of the purpose of the walkout, since the September 17 telegram was silent in this regard. Thus, the remaining Unions, i.e., other than the IBEW and Unions whose stewards were present at the picket line on September 29, cannot be presumed to have known that

5/ The mere presence of the stewards on the picket lines was not considered, nor would it be argued to be, sufficient to impute their conduct in striking to their respective Unions, since there is no evidence that the stewards (with the exception of IBEW steward Silva) were acting as leaders of the rank and file. Building and Construction Trades Council of Tampa (Tampa Sand Co.), 132 NLRB 1564, 1567-69.

the strike was called in violation of Section 8(d). Therefore, the remaining Unions were not considered under duty to disavow or take affirmative steps to end the walkout.

With regard to the Council, it was noted that it is not party to the collective bargaining agreement, and that, at least insofar as the instant dispute is concerned, the Council was merely acting as an agent of the Unions in negotiating subsistence pay on their behalf. In these circumstances, the Council was not viewed as liable for the Unions' conduct either independently or as their agent. Accordingly, the charge should be dismissed, absent withdrawal, as to the Council.

Case 31-CB-3927

It was concluded that complaint should issue, absent settlement, alleging that IBEW Local 357 violated Section 8(b)(1)(A) by engaging in various acts of misconduct in the presence of steward Silva. It appears that Silva was acting not as a rank and file picket, but rather as a leader or person in charge of the employee activities at gates 2 and 3. Compare Tampa Sand Co., supra. Thus, when supervisor Mathis attempted to enter the site on September 23, he was told by a rank and file employee that he could not enter without talking to Silva first. On September 22, a security guard complained to Silva that a picket was brandishing a handgun. Silva stated that he would have the employee removed from the site, and the employee subsequently left. Since Silva, in his capacity as Union steward, acted and was treated as a person in authority at the picket site, it would be argued that he became an agent of the IBEW with regard to picket line activity. Accordingly, IBEW would be liable not only for all misconduct undertaken by Silva, but also for all misconduct which took place in Silva's presence and which IBEW failed to disavow or take steps to rectify. McCormack-Young Corp., supra. The Region should determine which alleged acts of misconduct took place in Silva's presence and should issue complaint against IBEW as to them as well as to those in which he was personally involved.

It was further concluded that the Section 8(b)(1)(A) charge should be dismissed, absent withdrawal, with respect to the remaining Unions and the Council, since there is no evidence that these parties were on notice as to any allegedly unlawful conduct. McCormack-Young Corp., supra. 6/

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Cases 31-CC-1439 and 31-CC-1440

It was concluded that these charges, alleging Section 8(b)(4)(B) violations by the Unions and the Council, should be dismissed, absent withdrawal, because there is no evidence that any secondary activity of more than an isolated or de minimis nature took place after the Council was notified that neutrals were becoming enmeshed in the primary dispute. It is recognized that in the Region's view, some of the wildcat activity was secondary if undertaken by a labor organization. 7/ However, it does not appear that any secondary picketing occurred after September 25. Where a labor organization has been notified of unlawful rank and file activity for which it is putatively responsible, it will not be held liable under the Act if the activity ceases before the labor organization has had a chance to prevent it from recurring. Cf. Delta Lines, supra, at 994. 8/ In the instant cases, the Council was notified of "secondary" picketing by telegrams from Combustion Engineering and Western Ash on September 23 and 24, respectively. With the exception of one instance on September 25, it does not appear that picketing at allegedly neutral gates occurred after the Council received notice of the picketing. Accordingly, it does not appear that the General Counsel can make an affirmative showing 9/ that the Council, upon being notified of the "secondary" picketing, failed to take the necessary steps to prevent further occurrences. The charges in Cases 31-CC-1439 and 1440 should accordingly be dismissed, absent withdrawal.

H. J. D. *[Signature]*

- 7/ It is doubtful that all of the alleged secondary activity, assuming that agency could be shown, violated Section 8(b)(4) as charged. Thus, it appears that the only gate to be adequately reserved was gate 7, since it alone bore a sign purporting to exclude employees of the primary (Catalytic).
- 8/ In Delta Lines, the unlawful conduct which occurred in the course of authorized picketing had been specifically forbidden in advance by the union. While the charged parties herein did not specifically forbid any conduct, such a requirement was considered inapposite where, as here, the charged parties had not authorized any rank and file conduct in the first place.
- 9/ McCormack-Young Corp., supra, at 1088.